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THE GLIDDEN COMPANY and
HSCM-20-20 INC.

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WILLIAM D. WICK
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA DEPARTMENT
OF TOXIC SUBSTANCES CONTROL,

Plaintiff,

vs.

BAY AREA DRUM COMPANY, INC;
DAVID H. CANNON; HSCM-20-20 INC.;
and THE GLIDDEN COMPANY

Defendants.

No. C 02-1886 PJH

**DECLARATION OF WILLIAM D. WICK
IN SUPPORT OF MOTION OF HSCM-
20 INC. AND THE GLIDDEN
COMPANY FOR JUDICIAL
APPROVAL OF SETTLEMENT
AGREEMENT AND CONSENT
DECREE**

Date: September 10, 2003

Time: 9:00 a.m.

The Hon. Phyllis J. Hamilton

I, William D. Wick, declare as follows:

1. I am an attorney licensed to practice before all Courts in the State of California and am a partner in the law offices of Wactor & Wick LLP. I am counsel for The Glidden Company ("Glidden") and HSCM-20 Inc. ("HSCM-20") in this case. I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would competently testify thereto.

1 2. HSCM-20 and Glidden believe that the evidence that they disposed of
2 hazardous substances at the Bay Area Drum Site is extremely weak. Essentially,
3 DTSC's case rests on 13 ambiguous "ledger" documents and the testimony of a 64-year-
4 old retired former employee/owner who worked at the Site. The 13 pages of documents
5 suggest some sort of relationship, at one point, between the defendants and the Bay
6 Area Drum Company. However, HSCM-20 and Glidden believe the documents more
7 likely reflect *purchases* of reconditioned drums rather than the disposal of used drums.
8 Jack Hamilton testified at his deposition that he remembers Glidden disposing of drums.
9 However, HSCM-20 and Glidden believe that his testimony is inconsistent with his prior
10 statements on some key points, and the period of time that Hamilton remembers Glidden
11 sending drums is very limited.

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13 3. Because of the dearth of evidence, and because Glidden found no internal
14 records or information indicating that it had ever disposed of drums at the Property,
15 HSCM-20 and Glidden vigorously denied their liability for Site costs. However, in an
16 effort to resolve the matter, Glidden made periodic payments to DTSC, based on its
17 estimate of its allocable share of costs (assuming the figures represented shipments to
18 the site, rather than purchases from the site as Glidden believed). Those payments
19 totaled \$ 41,443.87.

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21 4. Despite efforts by plaintiff and defendants, HSCM-20 and Glidden were
22 unable to make progress in settlement discussions with DTSC prior to the deposition of
23 Jack Hamilton, in large part because plaintiff and defendants had very different views of
24 the strength of the case against defendants.

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26 5. After the Jack Hamilton deposition, the parties participated in a Settlement
27 Conference with Magistrate Judge Bernard Zimmerman. Through Judge Zimmerman's
28 mediation efforts, the parties were able to reach agreement on the terms of a settlement.

1 Under the settlement, HSCM-20 and Glidden will pay a total of \$ 260,000. Since
2 Glidden had previously paid \$ 41,443.87, HSCM-20 and Glidden will pay an additional
3 amount of \$ 218,556.13.
4

5 6. In addition to viewing of the evidence of disposal as weak, HSCM-20 and
6 Glidden believe that they have a number of valid defenses to DTSC's claim for past
7 costs, including, but not limited to, those based on statutes of limitations and the failure
8 by DTSC to comply with the National Contingency Plan.
9

10 7. Nevertheless, HSCM-20 and Glidden concluded that the terms of the
11 Consent Decree constituted a fair and reasonable compromise. Among other things, the
12 settlement eliminates the need for a trial, with its substantial costs.
13

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct and that this declaration was executed on this 16th day of
16 July, 2003, at Oakland, California.
17

18
19 By 

20 WILLIAM D. WICK
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